

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Madam Justice Janice L. leMaistre
Madam Justice Karen I. Simonsen

BETWEEN:

	)	<i>S. B. Simmonds, K.C. and</i>
	)	<i>C. J. Suderman</i>
<i>HIS MAJESTY THE KING</i>	)	<i>for the Appellant</i>
)	
<i>Respondent</i>	)	<i>A. C. Smith</i>
	)	<i>for the Respondent</i>
<i>- and -</i>)	
	)	<i>Appeal heard and</i>
<i>V. R. R. R.</i>	)	<i>Decision pronounced:</i>
	)	<i>June 1, 2026</i>
<i>(Accused) Appellant</i>)	
	)	<i>Written reasons:</i>
	)	<i>June 15, 2026</i>

NOTICE OF RESTRICTION ON PUBLICATION: No one may publish, broadcast or transmit any information that could disclose the identity of the victim or a witness (see *Criminal Code*, RSC 1985, c C-46, s 486.4).

On appeal from *R v VRRR*, 2023 MBKB 136 [*Reasons*]

SIMONSEN JA (for the Court):

[1] The accused was convicted of sexual assault and sexual interference against his then thirteen-year-old biological daughter. The conviction for sexual assault was stayed pursuant to the principles in *Kienapple v R*, 1974 CanLII 14 (SCC) and the accused appealed the conviction for sexual interference.

[2] Although a number of grounds of appeal were advanced, the accused's arguments focussed on the trial judge's analysis of his evidence. More specifically, the accused argued that, in rejecting his testimony, the trial judge made palpable and overriding errors in his assumptions as to how a person should testify (see *R v Kruk*, 2024 SCC 7 [*Kruk*]).

[3] At the conclusion of the hearing, we allowed the appeal, quashed the convictions and ordered a new trial with reasons to follow. These are those reasons.

[4] At the trial, the victim testified that the accused sexually assaulted her on three occasions in the family home. The accused also testified, denying all of the allegations. He indicated that he loved his daughters—the victim and his three daughters with his wife (the victim's stepmother). He explained that the victim was very hard to manage and that he and the stepmother had taken many steps to support her and help her make good choices. It was common ground between the victim and the accused that the victim frequently argued with the accused and the stepmother over a number of matters.

[5] In his reasons for decision, the trial judge identified the test in *R v W(D)*, [1991] 1 SCR 742, 1991 CanLII 93 (SCC) [*W(D)*] as “a useful approach for analyzing the credibility of an accused and the principle of reasonable doubt” (*Reasons* at para 39).

[6] In applying *W(D)* and assessing the credibility of the accused, the trial judge noted that this was not a case where the accused “blatantly undermine[d] [his] own credibility by being evasive, or by contradicting [himself], or by taking a position that cannot be accurate” (*ibid* at para 63).

The trial judge also addressed the demeanour of the witnesses but gave this very limited weight.

[7] The trial judge moved on, stating, “That being said, I must still attempt to draw some logical conclusions about the credibility of the accused” (*ibid* at para 67). The trial judge then reviewed and assessed two answers the accused gave during his testimony.

[8] As for the first answer, counsel for the accused at trial questioned him about the day he first learned of the allegations when an employee of Child and Family Services arrived at the family home and told him. Trial counsel asked the accused about his reaction. The accused replied:

I was surprised. I was afraid. I was worried. On that day, they asked me, do you want us to take the family away from you or do you want to move out of the house yourself? And I said I’ll leave. And I took all my things out. Clothing.

[9] In assessing the above answer, the trial judge found that “[i]t goes without saying that [the accused] was surprised, afraid and worried. However, if he was shocked, mortified and aghast by false allegations that he sexually assaulted his daughter when she was 13, he did not mention it” (*ibid* at para 69).

[10] As for the second answer, trial counsel later asked the accused how he felt about the victim at the time of the trial. He replied:

I’m very sad sometimes because I didn’t raise her to be like this . . . circumstances have affected me a lot. I love her, I’ve always loved her as a father, and I care for her a lot.

[11] In assessing the above answer, the trial judge noted that the accused “asserted that he still loves the [victim], but he expressed no concerns at all about her current mental health or wellbeing” (*ibid* at para 70). The trial judge further stated (*ibid* at para 71):

If the accused honestly believed that the [victim] completely invented all of the details of the sexual assaults that she shared with the police (and later the court), what did that suggest to the accused about the [victim’s] mental and emotional wellbeing? If she simply invented everything, and stuck to that invention when talking to the police and while under oath in court, and the accused really did love her like a father, would he not have expressed at least a tiny bit of concern about her mental wellbeing?

[12] The trial judge added that he “got the distinct impression that the accused was more concerned with his own inconvenience (he expressly mentioned his clothing), than with the mental and emotional wellbeing of his young daughter” (*ibid* at para 72).

[13] Having conducted this analysis, the trial judge rejected the accused’s evidence and determined that it did not raise a reasonable doubt as to his guilt.

[14] As for the victim’s evidence, the trial judge rejected the defence theory that she fabricated the allegations against the accused due to animus towards him resulting from their many disagreements. The trial judge found the victim’s testimony about the sexual assaults to be “credible and . . . reliable” (*ibid* at para 81) and that “the details of [her] allegations bear the ring of truth” (*ibid* at para 82). He addressed inconsistencies in her evidence and found that “nothing in the testimony of the [victim] created any reasonable doubts about the guilt of the accused” (*ibid* at para 83).

[15] In the end, the trial judge concluded that the accused was guilty as charged.

[16] The standard of review on questions of law is correctness. However, at its core, this appeal does not raise an error of law as contemplated in *Kruk* (see para 96). Instead, the accused challenges the credibility assessment made by the trial judge in rejecting the accused's evidence. Credibility assessments are owed significant deference on appeal and are reviewed on the standard of palpable and overriding error (see *ibid* at para 82).

[17] The question on this appeal is whether, in rejecting the accused's denials, the trial judge made a palpable and overriding error by relying on a "common-sense" assumption (*ibid* at para 94) that is "beyond the bounds of what common sense and the judicial function support" (*ibid* at para 95). In *Kruk* at para 97, the Supreme Court of Canada explained appellate review of such assumptions as follows:

Absent an error of law, the standard of review will be palpable and overriding error. The reviewing court must first determine whether the erroneous reliance on the assumption is palpable, in that it is "plainly seen", "plainly identified", or "obvious" (see *Housen*, at paras. 5-6; *R. v. Clark*, 2005 SCC 2, [2005] 1 S.C.R. 6, at para. 9; *Benhaim*, at para. 38, citing *South Yukon Forest Corp.*, at para. 46). Palpable errors in this context will include, for example, where the assumption in question is obviously untrue on its face, or where it is untrue or inapplicable in light of the other accepted evidence or findings of fact. Although trial judges are clearly best placed to make factual findings and assess the accuracy of generalizations, appellate courts can balance the need for deference to those findings with employing their own common sense to determine whether the presumption was *clearly* illogical or unwarranted so as to make out a palpable error. Appellate courts are routinely tasked with, for example, considering whether based on "logic and human experience" a particular piece of evidence

was relevant or whether an accused's after-the-fact conduct was consistent with that of a guilty person (*R. v. Corbett*, [1988] 1 S.C.R. 670, at p. 715; see *R. v. White*, 2011 SCC 13, [2011] 1 S.C.R. 433, at para. 17). In the context of factual generalizations, so long as the assessment remains focused on whether there was any *palpable* error, such an exercise remains an integral part of the judicial function of a reviewing court.

[emphasis in original]

[18] In our view, although the trial judge's assessment of the first answer is not entirely clear, it would be a palpable error if he assumed that a person, when first faced with what they consider to be false allegations of a crime, would necessarily deny them.

[19] As for the second answer, the trial judge found that the accused's focus on his own situation instead of expressing concern for the victim's mental well-being was inconsistent with his evidence that he loved the victim and provided extensive support to her—and that this inconsistency adversely affected the accused's credibility. In our view, this adverse credibility finding is grounded in the palpably erroneous assumption that an accused person, who loves their child, should continue to express concern for the child's mental well-being even when facing serious allegations made by the child that the accused person says are untrue.

[20] Trial judges are entitled to rely on common sense and life experience. However, human responses to serious allegations of sexual assault are highly variable. The assumption that a parent who loves their child would necessarily express ongoing concern for the child's mental well-being in these circumstances is not, without more, a reliable benchmark for assessing

credibility and falls outside the bounds of permissible common-sense reasoning.

[21] At the appeal hearing, the Crown conceded that, if the trial judge made palpable errors as alleged, they were overriding. We agree. The trial judge said that he was reviewing the answers in an attempt to determine the accused's credibility and that he "was surprised by [the accused's] answers" (*Reasons* at para 69). After reviewing the answers, the trial judge stated that he rejected the accused's denials of sexual activity with the victim and that he did not "discern anything in [the accused's] evidence that would raise a reasonable doubt about his guilt" (*ibid* at para 73). The trial judge's assessment of the accused's evidence clearly affected the outcome of the trial.

[22] We accept that a trier of fact may reject an accused's evidence where, having considered the totality of the evidence, they are satisfied beyond a reasonable doubt of the truth of conflicting evidence. However, in *R v Berg*, 2026 SCC 21, the Supreme Court cautions that a trier of fact cannot reject an accused's account based solely on a "considered and reasoned" acceptance" (at para 10) of the conflicting account of the complainant, as this raises the spectre of turning trials into credibility contests. Rather, the trier of fact must explain how the conflicting evidence—whether it is only the complainant's testimony or also includes circumstantial evidence—establishes guilt beyond a reasonable doubt. In that sense, the rejection of an accused's testimony may flow from a reasoned acceptance of conflicting evidence, but only where that acceptance meets the criminal standard and reflects a proper *W(D)* analysis. As we have explained, that is not what occurred here.

[23] In the result, we allowed the appeal, quashed the convictions and ordered a new trial on both counts.

Simonsen JA

Cameron JA

leMaistre JA
